

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

IN RE: ETHICON, INC., PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION	Master File No. 2:12-MD-02327 MDL No. 2327
THIS DOCUMENT RELATES TO ALL CASES	JOSEPH R. GOODWIN U.S. DISTRICT JUDGE

**SUPPLEMENTAL RESPONSE IN OPPOSITION TO PLAINTIFFS’
MOTION TO COMPEL**

Defendant Ethicon, Inc. (“Ethicon”) submits this supplemental response in opposition to Plaintiffs’ Motion to Compel (doc. no. 585) to present to the Court new facts that bear on the disposition of the motion.

Plaintiffs filed their motion to compel based on Ethicon’s responses to requests for production of documents that were served approximately 30 days prior to Plaintiffs’ filing their motion. Plaintiffs’ purported basis for their motion was that they were dissatisfied with the objections raised by Ethicon, particularly those that Plaintiffs described as “boilerplate.” Although Ethicon believes that its objections were appropriate for the reasons set forth in Ethicon's opposition, in the continued spirit of compromise and in an effort to not to burden the Court, Ethicon provided further supplemental responses, which Ethicon believes addressed most, if not all of plaintiffs' concerns.

When Ethicon served its supplemental responses, counsel for Ethicon suggested that the new responses would hopefully eliminate the need for a resolution of the motion to compel, but if they did not, that counsel for Ethicon would be glad to go through the responses one-by-one to

work out any remaining differences at a time and place convenient to Plaintiffs' counsel. *See* (6-13-13 Letter from C. Jones, Ex. 2 hereto.) Plaintiffs did not respond to Ethicon's responses or offer to meet. Two weeks later, counsel for Ethicon again offered to meet with counsel for Plaintiffs, in person, to work through any concerns that Plaintiffs may have. *See* (6-27-13 Letter from C. Jones, Ex. 3 hereto.)

On July 1, 2013, counsel for Plaintiffs sent a short response stating, without reason, that the supplemental responses were not acceptable and that Plaintiffs intended to press forward with the motion to compel *on Ethicon's earlier responses*. *See* (7-1-13 Letter from B. Aylstock, Ex.4 hereto.) On July 2, 2013, counsel for Ethicon again reached out to try to meet and confer concerning the supplemental responses. *See* (7-2-13 Letter from B. Watson, Ex. 5 hereto.) Specifically, counsel for Ethicon pointed out that, given the supplemental responses, the motion is not ripe to be heard. Counsel for Ethicon also renewed its previous requests to meet with Plaintiffs to try to understand what their concerns are with the new responses and to determine whether there are ways that the parties can work together to address those concerns to obviate the need for judicial intervention -- or at least narrow the issues in dispute. Plaintiffs declined to meet or to otherwise substantively discuss the supplemental responses. *See* (7-5 Letter from B. Aylstock, Ex. 6 hereto.)

The responses that are the subject of Plaintiffs' motion to compel are no longer the operative responses.¹ Instead, the supplemental responses that were designed to address the issues raised in Plaintiffs' motion are the ones at issue. Until the parties have completed a meaningful meet and confer concerning the substance of those responses, Ethicon respectfully

¹ Pursuant to Local Rule 37.1(c), Plaintiffs are required to set forth the exact substance of the request and response at issue. Because Plaintiffs have not done this with respect to the supplemental responses, Plaintiffs' motion is facially deficient.

submits that Plaintiffs' motion to compel is not ripe for decision. Accordingly, Ethicon requests that the Court hold the motion in abeyance and direct the parties to meet and confer concerning the supplemental responses served by Ethicon.

Dated: July 10, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to CM/ECF participants registered to receive service in this MDL.

/s/ Christy D. Jones

Christy D. Jones

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